

LEGAL PROTECTION FOR VICTIMS OF THE CRIME OF HUMAN TRAFFICKING IN THE CRIMINAL JUSTICE SYSTEM

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ABSTRACT

This study aims to examine and to analyze legal protection for victims of Human Trafficking in the criminal justice system, forms of legal protection for victims of Human Trafficking in the criminal justice system and models of legal protection for victims of Human Trafficking in the criminal justice system. The paradigm in research is constructivism. The approach in this research is social legal research. The type of data used is primary and secondary data. Data collection techniques through library research and field studies. Analytical descriptive data analysis is done in this research. The results of the study found that the model of legal protection for victims of criminal acts of Human Trafficking in the criminal law system through the Rights Service Model, the model emphasizes providing compensation in the form of compensation, restitution and efforts to restore the condition of victims who experience trauma, fear and pressure due to crime

Keywords: legal protection; Human Trafficking; Victims; SPP

INTRODUCTION

The rise of the problem of Human Trafficking in various countries, including Indonesia and other developing countries, has become a concern for Indonesia as a nation, the international community, and members of international organizations, especially the United Nations (UN). According to Marlina and Azmiati Zuliah, "Human Trafficking is one of the worst forms of treatment for violation of human dignity".¹

Victims are trafficked not only for the purpose of prostitution or other forms of sexual exploitation, but also include other forms of exploitation, such as forced labor or services, slavery, or practices similar to slavery.² The perpetrator of the crime of Human Trafficking recruits, transports, transfers, harbors, or receives persons for the purpose of trapping, or exploiting the person in the practice of exploitation in all its forms with threats of violence, use of force, kidnapping, forgery, fraud, abuse of power or position vulnerable, or providing payments or benefits to obtain the consent of a person having control over the victim. Women and children are the most vulnerable groups to become victims of the crime of Human Trafficking.

Forms of exploitation include forced labor or forced services, slavery, and practices similar to slavery are working conditions that arise through a method, plan or pattern intended to make a person believe that if he does not do a certain job, then he or the person who becomes dependents will suffer both physically and psychologically.³

The protection of victims of the crime of Human Trafficking in Indonesia is carried out based on Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, unless otherwise stipulated in Law no. 21 of 2007 concerning the Eradication of the Criminal Acts of Human Trafficking in accordance with Article 43 of the Law regulates the protection of victims as an important aspect in law enforcement, which is intended to provide basic protection to victims. In addition, this law also pays attention to the suffering of victims as a result of the crime of Human Trafficking, as compensation and restitution for victims, also regulates medical and social rehabilitation, repatriation and reintegration that must be carried out by the state, especially for victims who experience physical, psychological and psychological suffering, social consequences of the crime of Human Trafficking.⁴

Related to the issue of compensation and restitution, other countries have also provided normative regulations to provide a legal basis for the existence of compensation and restitution for crime victims. Compensation and restitution are terms that are often used interchangeably. But according to Stephen Schafer, the difference between the two terms is: That compensation is more civil in nature. Compensation arises from the victim's request and is paid by the community or is a form of community or state responsibility (the responsible of the society), while restitution is more criminal in nature, which arises from court decisions and is paid by the convict or is a form of responsibility of the convict (the responsibility of the offender).⁵

In Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (hereinafter referred to as the Criminal act of people-trafficking) there are several norms that contradict the principles of victim protection. There is a vagueness of norms in the criminal provisions of the Criminal act of people-trafficking, one of which is about making it a criminal subject only to the extent of only "state administrators".⁶ As referred to as state administrators in the law are members of the Indonesian National Armed Forces, members of the Indonesian National Police, security forces, law enforcement or public officials who abuse

¹Marlina dan Azmiati Zuliah, **Hak restitusi terhadap korban tindak pidana perdagangan orang** Bandung : Refika Aditama, 2015., page. 161.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*, page. 162.

⁵ Dikdik M. Arief Mansur, dan Elisatris Gultom, **Urgensi perlindungan korban kejahatan : antara norma dan realita.**, Jakarta : RajaGrafindo Persada, 2007.page. 167.

⁶ Article 8 and its explanation, Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking.

their power to commit or facilitate the criminal act of Human Trafficking. It can be concluded that the so-called state administrators are government officials, which includes the lowest government officials, namely the Village Head or Village Head.

The Head of the Neighborhood Association or the Head of the Hamlet who incidentally is an "apparatus" who has direct contact with the community, does not include state administrators, as referred to in Article 8 of the Law on the Eradication of the Crime of Human Trafficking. The legal consequence is that, when there is a criminal act of Human Trafficking, the Head of the Neighborhood Association or the Head of the Hamlet, who should know the person/citizens have left their residence, cannot be charged with the criminal article as regulated in Article 8. perpetrators of Human Trafficking, especially those who recruit as the beginning of the crime of Human Trafficking, are free to recruit victims, with various modes of crime such as persuasion, fraud, violence, threats of violence or debt bondage. So that the protection of victims of Human Trafficking is not yet comprehensive.

Furthermore, the Criminal act of people-trafficking does not specifically contain the principle of justice in providing legal protection to victims, especially children, because the criminal threats against perpetrators of child trafficking are the same as those of adult traffickers. The difference lies only in the weighting of the crime, the article reads "If the crime as referred to in Article 2, Article 3, and Article 4 is committed against a child, then the penalty is increased by 1/3 (one third)".⁷ These provisions are made separate from the main punishment, so that it can be perceived as an additional punishment that is facultative or optional. The provisions on criminal penalties that are separate from the main crime of child trafficking have the potential to be detrimental because they can be perceived as additional facultative crimes, which may or may not be imposed. When this happens, the criminal act of trafficking in children and women is considered the same as Human Trafficking in general. The logical consequence is that the basic objective to be achieved from the enactment of the Criminal act of people-trafficking, namely to protect children from the crime of Human Trafficking, has not fulfilled the principle of benefit.

Article 48 paragraph (5) of the Criminal act of people-trafficking states that restitution can be deposited first in the court where the case is decided. However, the article is not accompanied by provisions regarding the mechanism of safekeeping which includes when the safekeeping can be carried out and whether the safekeeping is effective or not. In the case that the restitution deposit is voluntary, this is contrary to the principle of certainty.

The Criminal act of people-trafficking also does not explain the extent of the role of the Prosecutor and how the relationship between the Prosecutor and the victim is and there is no firmness of the Prosecutor's authority in terms of filing legal remedies. In addition, the authority of the Prosecutor as the executor of the restitution decision is also not explicitly regulated, because Article 50 paragraph (3) only authorizes the Prosecutor to confiscate the assets of the perpetrator after there is an order from the Head of the Court if the restitution is not paid by the perpetrator. This implies the lack of certainty in the context of victim protection.

In the case of substitute imprisonment,⁸ restitution cannot be replaced with imprisonment because it is contrary to the spirit of Law Number 21 of 2007 itself. The substitute penalty should be eliminated and replaced with the provision that restitution must be paid by the perpetrator and will become the debt of the perpetrator and his heirs if he is unable to pay, so that whenever the perpetrator/his heirs have wealth, the Prosecutor is obliged to confiscate. This is more in line with the spirit of Law Number 21 of 2007 which emphasizes protection for victims in the form of compensation. Another alternative if it is difficult to do so is that the maximum limit for substitute punishment is adjusted to the victim's loss, because if the maximum limit is only 1 (one) year while the value of the victim's loss is very large, then the perpetrator will prefer a substitute punishment and this is very contrary to the sense of justice of the community.

In addition to the norms mentioned above, the issue of protection for victims is often ignored by law enforcement officials as well as by the community itself. Whereas the protection and victims of Human Trafficking is very important so that there is no Human Trafficking with the same victims. This legal protection is given so that victims feel calm and safe without fear. Law enforcement officers and the public should pay attention to victims of Human Trafficking from the pre-trial process, the trial, and after the completion of the trial, known as the criminal justice system.

The protection of victims is a proof of a formalistic legal culture which causes the ideas of justice which are the goal of law to protect victims and bring about justice are not accommodated properly, so what happens is that there is legal certainty that does not fulfill the sense of justice, as a result the application of legal thought is not responsive. Realizing this, the urgency of legal protection for victims of the crime of Human Trafficking in a criminal justice system, it is necessary to have a legal formulation that is expected in the future (*ius constituendum*).

RESEARCH METHOD

This study uses a social approach to legal research⁹, Social studies conceptualize legal norms and laws as well as the reality. The reviewer in socio-legal studies requires the mastery of doctrines the doctrine of law which has been built in the science of law itself (as the science of a priori and not exempt from value), and the procurement will be theories of the workings of the law, as a consequence of which see the law as reality¹⁰, Research socio-legal research is a law research with non-positivist paradigm that legal research with a hermeneutic philosophy¹¹, This study uses primary¹², data and secondary data¹³. The primary data collection techniques by observation and in-depth interviews with key informants who have been determined based on characteristics of the

⁷ Article 17, Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking.

⁸ Article 50 paragraph (4), Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking.

⁹Brian Z Tamahana " *Realistic Socio-Legal Theory Pragmatism and a Social Theory of Law*, Oxford University Press, New York, 1997, p. 1

¹⁰F.X. Adjie Samekto, *Opcit.* p.62, Read also Cavendish, 1997, *Law Cards Jurisprudence*, Cavendish Publishing Limited, The Glass House, Warthon Streets London, p. 129-130

¹¹Esmi Warassih, *Penelitian Socio-Legal; Dinamika Sejarah dan Perkembangannya*, unpublished scientific paper, p. 5

¹²Soerjono Soekanto & Sri mamudji, *Op. Cit.*, p. 7

¹³Mukti Fajar ND dan Yulianto Achmad " *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta, 2010, p.156

study investigators.¹⁴ Technique of data analysis of primary data, researchers used a type of data analysis techniques Strauss and J. Corbin,¹⁵ by analyzing the data since researchers were in the field (field). Furthermore, researchers conducting the preparation, categorizing data in the pattern / theme. Once the data is validated, the researchers conducted reconstruction and qualitative inductive analysis to be able to answer the problem¹⁶.

DISCUSSION

Legal Protection for Victims

1. Legal Protection Policy

In the framework of legal protection policy, the law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be carried out by limiting various interests on the other hand.¹⁷ The legal interest is concerned with human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected.¹⁸

According to Lili Rasjidi and I.B Wysa Putra, "the law can function to realize protection that is not only adaptive and flexible, but also predictive and anticipatory."¹⁹ Sunaryati Hartono's opinion said "that the law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice."²⁰

According to Phillipus M. Hadjon's opinion that "legal protection for the people is a preventive and repressive government action."²¹ Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion and repressive protection aims to resolve disputes, including their handling in the judiciary.²² So according to Philipus' opinion, the focus of this legal research is focused on the protection of victims after the occurrence of a crime (repressive protection). Where the legal protection is carried out by existing judicial institutions.

In line with the theory of legal protection used, it should be understood that efforts to obtain the legal protection desired by humans are order and regularity between the basic values of law, namely the existence of certainty, usefulness and legal justice, although in general the three values are in conflict, but should strive for all three values together.²³

So, the primary function of law is to protect the community from harm and actions that can harm and suffer from other people's lives, both by the community itself and the authorities. In addition, it also serves to provide justice and become a means to realize prosperity for the whole community. In supporting the functioning of a law in society, the purpose of the law as social engineering is expected to be able to direct the social life of the community in a better and advanced direction. Protection, justice, and welfare are aimed at legal subjects, namely supporters of rights and obligations, the entire community.²⁴

2. Victim Protection as a Criminal Policy

In the perspective of understanding the victim as a social protection, the social protection appears in criminal policy.²⁵ Victims of crime can be present in the criminal justice process with two different qualities. First, the victim is present as a witness. The function of the victim is to give testimony in the context of disclosing crimes that are in the process of being examined, both at the investigation stage, prosecution stage, and at the examination stage in court. Second, the victim is present as the aggrieved party. The function of the victim in this case is to file a claim for compensation against the perpetrator of the crime who has caused or inflicted a loss of suffering on him.

The victim protection paradigm is constructed by applicable laws and regulations, such as the Criminal Code and the Criminal Procedure Code, including institutional policies and law enforcement bureaucracy. Therefore, the form of victim protection has been constructed in the legislation. In this case it means that the social reality of victim protection is possible to experience degradation due to deficiencies or obstacles in the legislation, so that it does not accommodate the response to victims.

In connection with the efforts to protect victims through the Criminal Court so far, many have neglected, the problem of crime has always been focused on what can be done to the perpetrator, which is less questionable what can be done to the victim. Everyone thinks that the best way to help the victim is to catch the criminal, as if the criminal is the only source of trouble for the victim.²⁶

¹⁴ Sanapiah Faisal, *Format-format Penelitian Sosial*, Dasar-dasar dan Aplikasi, Rajawali Press, Jakarta, p. 135, see also Masri Singarimbun dan Sofian Effendi (Editor), *Metode Penelitian Survei*, LP3ES, Revision Edition, Yogyakarta, 1987, p. 192.

¹⁵Stauss and J. Corbin Busir, *Qualitative Research: Grounded Theory Prosedure and Technique*, Lindon Sage Publication, 1990, p.19

¹⁶Matthew B. Miles & A. Michael Huberman, *Analisis Data Kualitatif*, UI Press, Jakarta, 1992,p. 22

¹⁷ Satijipto Raharjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000, page. 53.

¹⁸ *Ibid.*, page. 69.

¹⁹ Lili Rasjidi dan I.B Wysa Putra, *Hukum Sebagai Suatu Sistem*, Remaja Rosdakarya, Bandung, 1993, page. 118.

²⁰ Sunaryati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, Alumni, Bandung, 1991, page. 55.

²¹ Phillipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, PT. Bina Ilmu, Surabaya, 1987, page. 2 .

²² Maria Alfons, *Implementasi Perlindungan Indikasi Geografis Atas Produk-produk Masyarakat Lokal Dalam Perspektif Hak Kekayaan Intelektual, Ringkasan Disertasi Doktor*, Universitas Brawijaya, Malang, 2010, page. 18.

²³ *Ibid.*

²⁴ <http://supanto.staff.hukum.uns.ac.id/>, Supanto, "Perlindungan Hukum Wanita", downloaded on 27 June 2016.

²⁵ Maya Indah, , *Perlindungan Korban Suatu Perspektif Viktimologi dan Kriminologi Edisi Kedua*, Kencana, Jakarta, 2014., page. 110.

²⁶ *Ibid.*, page. 114.

This can be seen from Marc Ancel's opinion regarding social defense, according to him, the modern concept of social defense is interpreted as the prevention of crime and the treatment of offenders. Ancel further stated that the consequence of the modern concept of social defense means that the goal of criminal law politics is the systematic resocialization of offenders.²⁷ This concept tries to protect the rights as human beings of the perpetrators of crimes even though he has to pay for the crime or the punishment.

It is clear from Marc Ancel's opinion that the concept of victim protection is socially assumed to be crime prevention and fostering criminals, indicating that victims receive less attention. Protection of victims is only interpreted indirectly by preventing the occurrence of crimes which seem to have been achieved if the perpetrator has been convicted, victim protection is annulled and limited in this concept and does not provide insight into efforts to seek access to justice and fair treatment to the victim and thoughts on compensation, restitution, and assistance.²⁸

According to Barda Nawawi Arif, that the broad formulation of the concept of community protection, namely in addition to protecting the community from crime and the balance and harmony of life in society, also includes elements of the need for attention to the interests of victims.²⁹ The perspective of victim protection as an element in public protection policies is also included in the results of the Congress in Milan, Italy, as quoted by Barda Nawawi Arief in the Declaration of justice for victims of Crime and abuse of power, which states that victims' rights should be perceived as an integral part of the total. criminal justice system.³⁰ Therefore, attention to the rights of victims must be seen as an integral and overall part of criminal policy.

Based on the foregoing, it is clear and needs to be underlined that in the context of legal protection for victims, victim protection must be used as part of efforts to enforce criminal law and part of social policy which is a joint effort to improve social welfare policy and social defense. policies that accommodate the rights of victims.

Victim protection is also an integral part of criminal policy. G. Peter Hoefnagels quotes Marc Ancel's opinion that the science of criminal policy is the science of crime prevention... criminal policy is the rational organization of the social reaction of crime science of crime prevention. Hoefnagels argues that criminal policy as a science of policy is part of a larger policy: The law enforcement policy... The legislative and enforcement policy is in turn part of social policy. ³¹Criminal politics as a rational effort to tackle crime is through penal and non-penal channels. This research is devoted to criminal policy through the means of criminal law in order to provide legal protection to victims of the crime of Human Trafficking.

In connection with the objectives of the Criminal Justice System as a whole, according to La Patra that, the Criminal Justice System sub system legitimately may experts to participate in one or more of these activities in order to contribute to the entire system's welfare, further stated by La Patra, that the three major goals of the overall CJS are the identification and processing offenders, the control of violence, and the provision of emergency services.³²

The integration between criminal policies and social policies incorporating public welfare policies and community protection policies results in the need for attention to victims. In this case, social defense is actually not only shown as the systematic resocialization of the offender as stated by Marc Ancel above, but also focuses on protecting the human rights and dignity of victims in the criminal justice process from policies to achieve welfare for victims or the community. In other words, victim orientation cannot be separated from the welfare of people who do not suffer or people who do not become victims in a broad sense.

This means that it is necessary to criticize positivistic legal thinking in the reform era, namely that law and law enforcement do not have their own goals apart from society in general. In other words, it is stated that based on the relationship between criminal policies and law enforcement policies with social policies, then a positivistic view and approach in law enforcement will clearly not support efforts to achieve community goals, namely welfare.

In the context of achieving protection and welfare, especially for victims, the orientation that needs to be considered is substance justice in the context of protecting victims by taking into account the values of humanism. By Bassiouni as quoted by Barda Nawawi Arief, the goals to be achieved by criminals are generally manifested in social interests that contain certain values that need to be protected. According to Bassiouni, these social interests are:

- a. Maintenance of order in society
- b. Protection of citizens from harm or even unjustifiable crimes committed by others
- c. Re-socialize (resocialize) the violators of the law
- d. Maintain or maintain the integrity of certain basic views regarding social justice, human dignity and individual justice.³³

Based on the thought above, it is only natural that the interests of the victims should be considered. Therefore, the main problem or object of criminal law in addition to the problem of criminal acts, liability, and crime, also includes the problem of victims. Victim protection in criminal justice is related to victim protection as part of the community protection policy and welfare policy as part of social policy. The integration between criminal policy and social policy results in the need for attention to victims. Understanding victims' human rights through legal protection is an integral part of the overall criminal policy.

In reality, a good criminal justice policy must be a paradigm developed to accommodate the protection of victims, the balance of the rights of the victims, the balance of the interests of the perpetrator and the victim in the context of protecting their human rights is a perspective of the work of the Criminal Court. The linkage of criminal politics to tackling crime has several essential parts, namely process inputs and outputs that cannot be separated from the norms in it. The analysis of the criminal justice process requires an analysis of the input dimension, which is the initial entry dimension and instrumental input as well as

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Barda Nawawi Arif, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, Ananta, Semarang, 1999, page. 91.

³⁰ *Ibid.*, page. 20.

³¹ Maya Indah, *Op. Cit.*, page. 116.

³² *Ibid.*

³³ Barda Nawawi Arif, *Op. Cit.*, page. 39.

environmental input from the strategic environment involved. are national, regional and global in nature with internationally recognized civilized human values. The instrumental input dimension is fundamental to how law enforcers act, especially in the institutions and arrangements of criminal law through the Criminal Procedure Code, the Criminal Code and other criminal legislation.

Related to the important role of the strategic environment in the operation of the Criminal Justice System, the basic values at the level of formulation have urgency that affect the level of application and the level of execution of criminal law, Mulyadi's opinion, which presents a realistic model as the basis for the Criminal Justice System called the balance of interests mode. It is important to put forward. This model pays attention to various interests that must be protected by criminal law, namely the interests of the state, public interests, individual interests, interests of criminal actors, and the interests of victims of crime.

The declaration of basic principle of justice for victims of crime and the abuse of power approved by the UN General Assembly on November 29, 1985 (Resolution 40/34) on the recommendation of the seventh congress stated that the protection of victims, among others, took the following forms:

- a. Victims of crime must be treated with respect for their dignity, and given the right to immediately claim redress. Legal and administrative mechanisms must be formulated and ratified to enable victims of crime to obtain redress.
- b. Victims of crime should be informed about their roles, timelines and progress made in handling their cases. The suffering and concerns of victims of crime must always be presented and communicated at every level of the process.... If comprehensive compensation cannot be obtained from the perpetrator of the delinquency in cases of severe physical or mental harm, the state is obliged to provide compensation to the crime victim or his family.
- c. Victims of crime must receive compensation to victims of crime or their families.³⁴

Conditioning Human Rights in Criminal Justice is an approach that must be used in material, formal criminal law, especially in the context of protecting victims, namely through the preparation of the new Criminal Code and the improvement of the Criminal Procedure Code, the rights of victims to access to justice and fair treatment, assistance, restitution, and compensation.³⁵ The implementation of human rights has created a pattern of reform for the realization of an integrated Criminal Justice System (including legal advisors) in order to carry out the control function as a negative effort to realize the Criminal Justice System, that the criminal justice process as a system with the Police, Prosecutors, Courts and Correctional Institutions requires cooperation and coordination from the subsystems. as well as outside the Criminal Justice System, namely in the first layer of society and the second layer in the economic aspects of education technology and politics. This involves the role of the government's political will, law enforcement officers, and the community in a collaborative network. In order to disseminate various international human rights standards, the role of legal education in the form of education and training is important for law enforcers, legal experts, relevant National Agency officials, NGOs and outreach to the wider community.

Based on the terminology above, it can be stated that victim protection in a broad concept includes two things, namely:

- a. Legal protection not to become a victim of crime or which is identical to the protection of human rights or one's legal interests means indirect protection of victims.
- b. Protection to obtain legal guarantees or compensation for suffering or loss of people who have become victims of crime includes the victim's right to obtain assistants and the fulfillment of the right to access to justice fair treatment, this means direct victim protection.³⁶

The form of victim protection indirectly in criminal policy is affecting security and welfare. Through the integration of criminal policies and social policies, the protection of victims identifies that every formulation of development policies must incorporate efforts towards community protection.

In the Code of Conduct for Law Enforcement Official adopted by the UN general assembly on 17 December 1979 on the recommendation of the 5th Congress it is stated that:

- a. Law enforcers must carry out the obligations placed on them by the law by serving the community and protecting everyone against acts of lawlessness.
- b. Services to the community include assistance to those who personally, economically, socially and for other urgent reasons need state assistance.
- c. Law enforcers must not engage in any kind of corruption or collusion and must vigorously oppose all such acts.³⁷

The direct form of victim protection is the victim's right to receive compensation and the victim's right to access to justice and fair treatment, compensation, restituted, and assistance. It is a reaction to the focus of attention on criminal law which places the victim as a forgotten person.

The form of victims in this case, besides covering concrete victims, also includes abstract victims, including those who because of policies in law enforcement are not categorized as crime victims, namely because of the discretion of law enforcement, the inaccessibility of harmful acts experienced by victims by law enforcement or the selectivity of law enforcement behavior that does not clarify certain manufacture as having caused harm or as a crime. Therefore, this victim is not only shown to the form of ordinary crime or stalls, but also refers to the illegal behavior of abuses of public or economic power.

Existing losses mean not only material and physical losses but also social losses in terms of social and moral values, justice and human and community rights as well as democratic values in the life of the nation, state and society. Victim protection is not only struggling to realize justice of law for new legislation processes (the process of making new laws) but also more than that, namely reviewing injustice of law that can be practiced in law enforcement. Thus the concept of legal protection in the context of protecting victims is how to realize the law as a means of embodiment of protection.³⁸ Law enforcers, whether police, prosecutors or judges, do not only apply the law because something has been violated but because something is just (the just) that needs to be protected and realized.

³⁴ *Ibid.*, page 124.

³⁵ *Ibid.*

³⁶ *Ibid.*, page 125.

³⁷ *Ibid.*, page 128.

³⁸ Susanto, *Kejahatan Korporasi di Indonesia Produk Kebijakan Rezim Orde Baru*, Undip, Semarang, 1999, page. 5.

Fair legal protection is understood that all people are treated the same as other human beings. This includes two things, namely the equality of everyone before the law or based on the principle of equality before the law (equality before the law) in law enforcement, namely whether law enforcers have made it happen, as well as equality in the law (equality in the law). as a guide to analyze whether the contents of the provisions of the legislation have regulated equality before the law. This concept is to embody the protection of victims as one of the parties in Criminal Justice, can equality before the law and equality in the law be reflected in legal protection.

Considering that the criminal justice works in a social dimension that involves the community and various social constructions. So the work of legal institutions and institutions to seriously protect victims must be seen as a social process that involves the community as a totality. This paradigm provides a study that in the context of legal protection to realize victim protection and criminal justice, it involves a moral paradigm or reason not only the habitat of legislation/institutions that must accommodate it but also the behavior of law enforcers/institutions, and is supported by the community with various aspects. Life such as politics, economy, culture that interact with each other, influence, and synergize.

3. Forms of Victim Protection

Giving Restitution and Compensation

Every victim of the criminal act of Human Trafficking or their heirs has the right to obtain restitution from the perpetrator. This restitution is compensation for loss of wealth or income, suffering, costs for medical and/or psychological treatment and/or other losses suffered by the victim as a result of Human Trafficking.³⁹

Judging from the interests of the victim in the concept of compensation, there are two benefits, namely to meet material losses and all costs that have been incurred and are emotional satisfaction of the victim. In terms of the interests of the perpetrator, the obligation to compensate is seen as a form of punishment imposed and is felt as something concrete and directly related to the mistakes made by the perpetrator.

According to Gelaway, there are five objectives of the obligation to compensate for losses, namely:

- 1) Ease the suffering of the victim
- 2) As an element that mitigates the punishment to be imposed
- 3) As a way to rehabilitate convicts
- 4) Facilitate the judicial process
- 5) Can reduce the threat or reaction of the community in the form of acts of revenge.⁴⁰

The first objective is to relieve the suffering of the victim, it can be understood as an effort to relieve the burden of the victim, both physical and non-physical suffering. However, it must also be determined what losses are appropriate for compensation. Compensation that will be charged to the perpetrator must still be seen as a form of crime and must be adjusted to the economic capacity of the perpetrator. As for the second purpose, compensation that can only be applied to the type of crime that can be replaced with other forms that form the effect of mitigating the punishment to be imposed. For the third purpose, it relates to the perception and attitude of the community in accepting the presence of the perpetrators of criminal acts. The attitude to choose compensation for the victim will give the perpetrator more opportunities to re-enter as a member of the community than if he has to serve a criminal period. The fourth goal will facilitate the criminal justice process and the fifth goal relates to the third goal which is a step to reduce public reactions in the form of acts of revenge.

The core purpose of the obligation to provide compensation is none other than to develop justice and the welfare of victims as members of the community and the benchmark for its implementation is to provide opportunities for victims to develop their rights and obligations as human beings. For this reason, it is necessary to have rules in legislation that are firm, simple and easy to understand, so that discrimination in the application of law enforcement or intimidation from certain parties can be avoided which will further worsen the position of the victim in prolonged suffering. At this stage the victim will suffer losses as a crime and as a structural victim.⁴¹

In an effort to protect victims, restitution is a payment of compensation charged to the perpetrator based on a court decision that has permanent legal force for material losses suffered by the victim or his heirs.⁴² Restitution is more directed at the responsibility of the perpetrator for the consequences caused by the crime, so that the main goal is to overcome all the losses suffered by the victim. The benchmark for determining the amount or size of compensation depends on the social status of the perpetrator and the victim.

In addition to restitution, compensation can be used as another form of protection for victims of criminal acts as compensation for losses provided by the state. Compensation by the state is a payment for welfare services, because the state is responsible and morally obliged to protect its people. If members of the community become victims of human trafficking, the government is considered to have failed to fulfill its obligations, namely preventing or protecting the community from crime.

According to Stephen Schafer, the difference between restitution and compensation is that restitution is more of a criminal nature that arises from a criminal court decision and is paid by the perpetrator or is a form of accountability of the perpetrator, while compensation is more civil in nature, which arises from the victim's request and is paid by the community or is a form of community responsibility. or country.⁴³

³⁹ Farhana, *Op. Cit.*, page. 164.

⁴⁰ Chaerudin dan Syarif Fadillah, *Korban Kejahatan dalam Kejahatan dalam Perspektif Viktimologi dan Hukum Pidana Islam*, Grhadhika Press, Jakarta, 2004, page. 65.

⁴¹ Arif Gosita, *Viktimologi dan KUHAP*, Akademika Pressindo, Jakarta, 1987, page. 35.

⁴² See Article 1 point 15, Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons.

⁴³ Didik M. Arif, *Op. Cit.*, page. 167.

Counseling and Medical Services/Assistance

In general, the protection provided to victims as a result of the crime of Human Trafficking can be physical or psychological. Psychological effects take longer to heal than physical effects. The effects of the criminal act of Human Trafficking can last for months or even years. For some victims the effects do not reach a stable situation in which the memory of the event can be received one way or another. For some victims of the effects of it do not get a good way out, such as drowning in suffering called psychotrauma.

Therefore, assistance or counseling is needed to help victims in order to recover their psychological condition as before. As a companion to the victim, he must be able to try to keep himself on the side of the victim and not judge him. The principles in assisting victims must be thoroughly mastered when assisting victims. Victims in a state of trauma need someone who is trusted and can create a sense of security for themselves. Medical services are provided to victims who suffer as a result of a crime. The medical services in question can be in the form of health checks, treatment and written reports or visas.

Legal Aid

Victims of criminal acts should be given legal assistance, as well as victims of criminal acts of Human Trafficking. When the victim decides to resolve his case through legal channels, the state is obliged to facilitate it. The state, in this case, represents the victim to prosecute perpetrators of criminal acts. Besides the State representing the victim, Non-Governmental Organizations are also allowed to play a role in legal assistance to victims of criminal acts, including victims of the crime of Human Trafficking.⁴⁴ This is because many of the victims do not know their rights and what legal steps they can take to resolve the cases they face. How about how to report it, how to get the visa so that it can be used as evidence and what other legal steps are not known to the victim because they do not have special knowledge for it.

Thus, the provision of legal assistance to victims is given whether requested or not requested by the victim because there are still many victims who have a low level of legal awareness. Allowing the victim of a crime not to receive proper legal assistance can result in the worsening of the condition of the victim of a crime, including the crime of Human Trafficking.

Information Provision

Providing information to victims or their families related to the process of investigation and examination of criminal acts experienced by victims. The provision of this information plays a role in efforts to make the community a partner of the police because through information it is hoped that the community's control function on police performance can run effectively. One of the efforts made by the police is to provide information to victims or their families through websites at several police offices, both policy and operational.

In the Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power, the forms of protection that can be given to victims have been formulated, namely access to justice and fair treatment, restitution, compensation and assistance.⁴⁵

The opportunity to obtain justice and fair treatment (access to justice and fair treatment) according to the declaration that victims must be treated with compassion and respect for their dignity. Victims have the right to have the opportunity to use justice mechanisms and to obtain compensation immediately in accordance with national legislation. Courts and administrative mechanisms are enforced to enable victims to obtain compensation through formal and informal procedures that are effective, fair, inexpensive and affordable.

The availability of judicial and administrative processes, to address the needs of victims must be facilitated by informing victims of the process and progress of their cases, allowing victims' concerns to be raised and considered without prejudice to the accused and in accordance with the national criminal justice system, providing adequate assistance to victims during the sentencing process, actions to reduce harm to victims, protect personal freedoms and if necessary ensure the safety of their families and witnesses from intimidation and retaliation, avoid unnecessary delays in the placement of cases and the execution of orders or decisions that provide compensation to victims.

Informal mechanisms for dispute resolution, including mediation, arbitration and customary or customary courts should be used where appropriate to facilitate settlement and provide compensation to victims.⁴⁶

Restitution in the Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power states that guilty persons or third parties responsible for their behavior must provide fair restitution to victims, their families or dependents. The restitution includes the return of property or payment for the damage or loss suffered, reimbursement of costs incurred as a result of the victim's fall, provision of services and restoration of rights.

Compensation is not fully available from the guilty person or other sources, the state should endeavor to provide financial compensation to victims who have suffered serious bodily injury or deterioration in their physical or mental health as a result of serious crimes and their families, especially dependents of the victims. a person who dies or becomes physically or mentally disabled as a result of the crime.

Assistance for victims must receive necessary material, medical, psychological and social assistance through government means, voluntary means, involving public funds. Victims should be informed of the availability of related health, social and other assistance services and they should always be given the opportunity to take advantage of them. Police officers, courts, health social

⁴⁴ Maya Indah, *Op. Cit.*, page. 167.

⁴⁵ *Ibid*, page. 168.

⁴⁶ Adnan Buyung Nasution dan A. Patra M. Zen, *Instrumen Internasional Pokok Hak Asasi Manusia*, Yayasan Obor Indonesia, Jakarta, 2006, page. 516.

services from other personnel concerned should receive guidelines to make them sensitive to the needs of victims, as well as receive guidelines to ensure correct and prompt notification of assistance.⁴⁷

Victim Protection Models

In order to provide victim protection in order to create a sense of security, it is necessary to empower victims in the criminal justice system. Fundamentally, there are two models of victim protection, namely: First, the procedural rights model (The Procedural Rights Model or Participatory Model) or in France it is called the *partie civile* model (civil action system) and Second, the service model (The Services Rights Model).⁴⁸

a. The Procedural Rights Model

In short, this procedural rights model emphasizes that it is possible for victims to play an active role in the criminal justice process, such as assisting the Public Prosecutor, being involved in every level of case examination, having their opinion heard if the convict is released on parole, and so on. In addition, by actively participating in the criminal justice process, victims can regain their self-esteem and confidence.

However, the involvement of the victim has a positive side in law enforcement and also has a negative side because the victim's active participation in the implementation of the criminal justice process can cause personal interests to be above the public interest. However, historically, this theory is the background to the formation of the prosecutor's office, as stated by Jan J.M. van Dijk, The Hague, that historically this has been the main justification for the stabilization of the office of the public prosecutor.⁴⁹

Furthermore, another reason put forward by groups that oppose granting procedural rights to victims is that giving the victim an individual role in the trial process or prosecution of the perpetrator, means making her partly responsible for the proceedings and the outcome of the process so that the burden of this responsibility will be reduced. quite heavy pressure for the victim in various aspects. Pressure can arise from the person with whom the victim made contact and/or caused by the police or prosecutors who will use their rights for the public interest. Perpetrators and their lawyers will attempt to influence the victim's behavior during the process and sometimes by means of intimidation.

Even when the correctional institution is about to give conditional release to perpetrators who have been convicted, the victim must be consulted for that. In the end, in order to settle the case, the victim is given the right to make peace or sue in a civil manner. In France this kind of thing is called the *Parti Civil Model* (Civil Action System).⁵⁰ The procedural rights model has its advantages and disadvantages.

The advantages include giving the victim the right to actively participate in the judicial process, a model like this is considered to be able to fulfill the feelings of revenge that exist in the victim or the community, especially if the perpetrator can be punished according to the wishes of the victim or the community. As stated by Richard D. Schwartz and Jerome H. Solnick, that one of the purposes of criminal sanctions is to provide a channel for realizing motives for revenge (to provide a channel for the expression of retaliatory motives).⁵¹ Whether this desire is realized or not, it must exist everywhere so that by channeling this desire an atmosphere of cooperation between the Police, Prosecutors and victims can be created. In addition, through this method, the victim is more likely to regain the self-esteem and confidence that was taken away by the perpetrator's actions.

Another advantage of the procedural rights model is that by giving the victim the right to be active in the judicial process, this can be a counterweight to the actions of the apparatus that are deemed to have less regard for the victim's feelings, for example, the prosecutor's demands are considered too light or even the prosecutor's actions to rule out the case. in the public interest. This first model is also considered to be able to increase the flow of quality information to judges regarding cases that occur, because usually information about a case is dominated by the defendant and his lawyer who can actually corner the victim in court.

The weakness of the procedural rights model is that this model is considered to create a conflict between public interest and private interest.⁵² The activeness of the victim in the judicial process can place the public interest under the interest of the individual. An atmosphere of free trial based on the principle of presumption of innocence can be disrupted by the opinions of victims about punishment, which must be based on emotional thoughts to retaliate. In addition, the inclusion of victims in the administration of justice can create an excessive burden, complicate and prolong the judicial process. This is contrary to the growing trend to further simplify, streamline and simplify the cost of the judicial process.

According to G. Widiartana, another weakness of the procedural rights model is "the possibility of creating a mental burden for the victim and opening up the opportunity to make him a victim for the second time".⁵³ Not everyone is able to stand face-to-face as opposed to the other party in court. In general, the victim is a party who has less knowledge and experience in the field of justice than the defendant's lawyer, even being in the judicial process is the first experience for the victim. Furthermore, G Widiartana said, "the activeness of victims in the judicial process psychologically, practically and financially is often not beneficial".⁵⁴ The victim's anxiety, depression and indifference do not allow him to act naturally. Trials that have to be carried out repeatedly can disrupt the financial condition of the victims who have to pay their own expenses to attend them.

⁴⁷ Muladi dan Barda Nawawi Arief, *Bunga Rampai Hukum Pidana*, Alumni, Bandung, 2007, page. 80.

⁴⁸ *Ibid.*, page. 83.

⁴⁹ Parman Soeparman, *Pengaturan Hak Mengajukan Upaya Hukum Peninjauan Kembali Dalam Perkara Pidana Bagi Korban Kejahatan*, Refika Aditama, Bandung, 2007, page. 63.

⁵⁰ Widiartana, *Op. Cit.*, page. 76.

⁵¹ Muladi dan Barda Nawawi Arif, *Op. Cit.*, page. 20.

⁵² Widiartana, *Op. Cit.*, page. 77.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

b. The Services Right Model

The Rights Service Model emphasizes the provision of compensation in the form of compensation, restitution and efforts to restore the condition of victims who are traumatized, fearful and depressed due to crime.⁵⁵ Attention to victims is placed on the need to create standard standards for the protection of crime victims that can be used by the police, for example in the form of guidelines for notification to victims and/or prosecutors in the context of handling their cases, providing compensation as restitutive criminal witnesses and the impact of statements made by the police. statement of the victim before the sentence is imposed.⁵⁶ This approach sees crime victims as specific targets to serve within the framework of the activities of the Police and other law enforcement agencies.

This model of service rights also has advantages and disadvantages. The advantages are: First, the program of activities in this model can be used as a means to restore trust in individual relations in social life. Victims will feel that their interests are guaranteed in an atmosphere of fair social order. An atmosphere of order, control and mutual trust can be re-created. Second, this model is considered to be cost-saving, because with the creation of standardized standards, criminal justice can more easily consider the losses suffered by victims in order to determine compensation.⁵⁷

Thus, victims of TIP are subject to social and legal protection. Regarding this, Mardjono Reksodiputro stated several reasons why the protection of crime victims should receive attention, namely:

1. The criminal justice system is considered to pay too much attention to the problems and roles of the perpetrators of crime (offender centered);
2. There is potential for information from victims to clarify and complete the interpretation of criminal statistics through research on victims and it must be understood that it is the victim who drives the mechanism of the criminal justice system;
3. It is increasingly realized that apart from victims of conventional crimes, it is no less important to pay attention to victims of unconventional crimes and victims of abuse of power.⁵⁸

According to Suharto In addition to the three things mentioned above, there are factors that need protection for victims of crime, namely: First, the existence of a conventional legal system that places criminal law as public law. When a crime occurs, the visible relationship is not a coordinating relationship between the perpetrator and the victim, but a subordinate relationship between the perpetrator and the authorities, either as representatives of the victim or assigned to pay attention to the interests of the community. Second, the development of several crimes that do not cause victims (crime without victims) from crimes with scattered victims (diffusion victimization) today.⁵⁹

The importance of protecting victims of crime has received serious attention by the United Nations as a result of The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders which in one of its recommendations states that: Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.⁶⁰ In its recommendations, perpetrators or third parties must be held accountable for their behavior, if appropriate to make fair restitution for victims, their families or dependents. Such restitution must include the return of property or payment for damage or loss suffered, reimbursement of costs incurred as a result of the victim, provision of services and restoration of rights.

Justice and human rights in relation to criminal law enforcement must be realized concretely. Many of these two problems have not received serious attention from the government. In the mechanism of law enforcement through a criminal law approach, violation of a right becomes the full authority of the state and the presence of victims tends to have no influence on the decisions of law enforcers. With regard to victims of crime, it is also necessary to make effective the existing special institutions to guarantee the rights of the victims of crime. It is not uncommon to find someone who has suffered (physical, mental, or material) due to a criminal act that happened to him (because this incident is a disgrace to himself and his family) so it is better for the victim to hide it, or the victim refuses to apply for compensation because it is feared that the process will become longer and more protracted which can result in prolonged suffering. There are several general rights provided to victims or their families of crime victims, which include:

1. The right to obtain compensation for the suffering suffered. This compensation can be given by the perpetrator or other parties, such as the state or a special institution formed to handle the problem of compensation for victims of crime;
2. The right to obtain guidance and rehabilitation;
3. The right to obtain protection from the threat of perpetrators;
4. The right to obtain legal aid;
5. The right to reclaim his property;
6. The right to have access to medical services.⁶¹

The measure that can be taken into account for the rules of rights for victims is the amount of involvement and functional responsibility rights of the victim in a criminal act. According to Arif Gosita, the rights of victims of criminal acts are:

1. Obtaining services (assistance, restitution and compensation);
2. Refusing to get services in the interests of the perpetrators;

⁵⁵ *Ibid.*

⁵⁶ Widiartana, *Op. Cit.*, page. 78.

⁵⁷ Widiartana, *Op. Cit.*, page. 78.

⁵⁸ Mardjono Reksodiputro, *HAM Dalam Sistem Peradilan Pidana Kumpulan Karangan, Buku ke II, LKUI, Jakarta, 2004, page. 75.*

⁵⁹ Soeharto, *Perlindungan Hak Tersangka, Terdakwa Dan Korban Tindak Pidana Terorisme Dalam Sistem Peradilan Pidana Indonesia*, Refika Aditama, Bandung, 2007, page. 80.

⁶⁰ Farhana, *Aspek Hukum Perdagangan Orang di Indonesia*, Sinar Grafika, Jakarta, 2010, page. 161.

⁶¹ Dikdik M. Arief Mansur dan Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan Antara Norma dan Realita*, Raja Grafindo Persada, Jakarta, 2007, page. 51.

3. Get services for his heirs;
4. Reclaim his property rights;
5. Refuse to be a witness, if this will endanger him;
6. Get protection from the threat of the victim when reporting;
7. Get information about the problems it faces;
8. Obtain the right to carry out his work;
9. Obtain proper service before the trial, during the trial and after the trial;
10. Obtain the assistance of legal counsel;
11. Using legal remedies (rechtsmiddelen).⁶²

In general, rights can be contrasted with obligations, the rights of victims cannot be said to have obligations for criminals on the other hand. Fulfilling the rights of victims is generally more the responsibility of the government by providing guarantees through statutory regulations. Therefore, according to Widiartana, "the realization of the fulfillment of the rights of victims is very dependent on the efforts made by the government to organize community welfare programs",⁶³ which in a broad sense includes efforts to provide legal protection for community members. A right can be negative if the owner of the right is free to do something or have something. While rights are positive if the owner of the right has the right to make someone else do something for him.

In fulfilling the welfare of the community by way of legal protection for victims of crime, an in-depth study is needed so that it is right on target. Muladi gave reasons in terms of assessing the need for protection of crime victims, including:

1. The sentencing process has two meanings, in a general sense, the sentencing process as an authority according to the principle of legality. In a specific/concrete sense, the sentencing process is related to the determination of a criminal through a penitentiary infrastructure.
2. The existence of a social contract argument, namely that the state monopolizes all social reactions to crime and prohibits private actions and the argument of social solidarity that the state must keep its citizens in trouble through cooperation with citizens.
3. Victim protection is linked to one of the objectives of punishment, namely conflict resolution.⁶⁴

Victims of crime can be present in the criminal justice process with different qualities. The victim who is present as the aggrieved party, will file a claim for compensation against the perpetrator of the crime who has caused or caused harm/suffering to him/her.⁶⁵ Protection of victims must be an important part of efforts to enforce criminal law, as part of social policy which is a joint effort to improve welfare that accommodates the rights of victims. Not giving victims' rights explicitly in the legislation can lead to distrust of victims, that their rights will be protected even when they participate in the judicial process to support law enforcement.⁶⁶ This shows that the state has failed to realize the welfare system of its citizens who are victims of crimes against humanity, because the rights of victims are neglected.

According to Edmon Cahn, "in order to provide protection for parties who must be protected by law, including victims, who are called legal consumers, an antropocentric view of the law is needed".⁶⁷ This view is a view of law and government where humans concretely live in the midst, as the main consumers of law and government. The consumer perspective is the concept of victim protection through the work of criminal justice, so that the legal protection provided gives meaning to the legal needs of the community.

The operation of law as a social process involves society as a totality. Robert B. Seidmann argues "the operation of law in society is not something abstract, people choose and act within the scope of restrictions and from the sources contained within their scope".⁶⁸ Legal regulations and actions of law-implementing institutions only stipulate one aspect of the environment. A set of legal regulations will only cause behavior if the regulation is determined based on the will as an independent variable, while other factors are conditions. Therefore, according to Robert, "it must be accepted as a truth that all non-legal elements that influence the selection and identification of legal regulations are operational variables or causes and as explanations".⁶⁹

Legal protection for victims of human trafficking is to protect the rights of every person who is a victim of the crime of Human Trafficking to get the same treatment and protection under the law, therefore any violation of the law that has occurred to the victim and the impact suffered by the victim, the victim has the right to get the necessary assistance and protection in accordance with legal principles.

CONCLUSION

The model of legal protection for victims of the crime of Human Trafficking in the criminal law system through the Rights Service Model, the model places more emphasis on providing compensation in the form of compensation, restitution and efforts to restore the condition of victims who are traumatized, fearful and depressed due to crime. Attention to victims is placed on the need to create standard standards for the protection of crime victims that can be used by the police, for example in the form of guidelines for notification to victims and/or prosecutors in the context of handling their cases, providing compensation as restitutive criminal witnesses and the impact of statements made by the police. statement of the victim before the sentence is imposed. This model sees crime victims as special targets to be served within the framework of the activities of the Police and other law enforcers. The

⁶² Arif Gosita, *Op. Cit.*, page. 260.

⁶³ Widiartana, *Viktimologi Perspektif Korban Dalam Penanggulangan Kejahatan*, Cahaya Atma Pustaka, Yogyakarta, 2014, page. 75.

⁶⁴ Maya Indah, *Op. Cit.*, page. 111.

⁶⁵ *Ibid.*, page. 113.

⁶⁶ Marlina dan Azmiati Zuliah, *Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang*, Refika Aditama, Bandung, 2015, page. 21.

⁶⁷ Maya Indah, *Op. Cit.*, page. 72.

⁶⁸ *Ibid.*, page. 73

⁶⁹ *Ibid.*, page. 161.

service rights model has two advantages, namely that it can be used as a means to restore trust in individual relationships in social life. Victims will feel that their interests are guaranteed in an atmosphere of fair social order. An atmosphere of order, control and mutual trust can be re-created, and can save costs, because with the creation of standardized standards, criminal justice can more easily consider the losses suffered by victims in order to determine compensation.

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